



## LEGAL UPDATE

August 9, 2012

### An Act Relative to Sentencing and Improving Law Enforcement Tools

#### Chapter 192 of the Acts of 2012

On August 2, 2012, the Governor signed an omnibus crime bill that became effective immediately (unless otherwise noted). Below is a summary of the new law organized by topic with corresponding references to Chapter 192 of the Acts of 2012. Attached is a copy of the law.

- **Minimum Mandatory (MM) Drug Sentences:**

- Reduces the minimum number of years on mandatory drug sentences, but keeps them ineligible for parole:
  - 15 year MM sentence to 12 years MM (Sections 23, 27)
  - 10 year MM sentence to 8 years MM (Sections 19, 22, 26)
  - 7 year MM sentence to 5 years MM (Section 25)
  - 5 year MM sentence to 3 ½ years MM (Sections 12, 14, 18, 21, 25)
  - 3 year MM sentence to 2 years MM (Sections 13, 17, 21)
  - 2 year MM sentence to 18 months MM (Sections 15, 16)
  - The one year MM sentences stay intact.
- Provides parole eligibility for offenders currently serving minimum mandatory drug sentences upon completion of the new sentences contained in bill. (Section 48)
- Increases drug gram weights that trigger minimum mandatory sentences:
  - 14 – less than 28 grams increased to 18 – less than 36 grams (Sections 20, 21, 24, 25)
  - 28 – less than 36 grams increased to 36 – less than 100 grams (Sections 21, 25)
  - 100 and 200 grams are left intact.
- Permits unsupervised work release for offenders serving drug minimum mandatory sentences. (Sections 28, 29)
- School Zones: Reduces school zones from 1000 ft. to 300 ft.; applies only to crimes committed between 5:00 AM and Midnight. (Sections 30, 31)

- **Other Controlled Substances:**
  - Permits the prescribing and dispensing of Naloxone, or other opioid antagonist, to a person at risk of an overdose, or a family member, friend or other person in position to assist such person at risk of overdose. (Sections 11, 32)
- **Good Samaritan Exemption:** (Section 32)
  - Prohibits the prosecution for possession of a controlled substance of a person who, in good faith, seeks medical assistance for someone experiencing a drug related overdose, if the evidence was gained as a result of the overdose and need for medical assistance.
  - Prohibits the prosecution for possession of a controlled substance of a person who experiences a drug related overdose, and in good faith, seeks medical assistance, or is the subject of a good faith request for medical assistance, if the evidence was gained as a result of the overdose and the need for medical assistance.
  - The act of seeking such medical assistance may be used as a mitigating factor in prosecution under the controlled substances act.
- **Indeterminate sentences:** Except in 1<sup>st</sup> degree murders or for person convicted of multiple life sentences arising out of separate incidents, a judge must set a minimum term to all sentences to life. The minimum term cannot be less than 15 years not more than 25 years. (Sections 45, 46)
- **Calculation of Sentence Reductions:**
  - Increases sentence reduction for good conduct or program/activity participation from 2½ days to 5 days per activity/good conduct per month. (Section 33)
  - Increases maximum monthly deduction from 7 ½ days to 10 days per month for good time. (Section 34)
  - Permits DOC commissioner to grant an additional deduction of up to 10 days for successful completion of program/activity requiring 6 months of participation. (10 days are in addition to monthly maximum.) (Section 35)
- **DNA submission after felony conviction:**
  - Requires Trial Court and Probation to work with State Police Crime Lab to provide electronic notification when a defendant is convicted of a crime requiring a DNA sample. (Section 1)
  - Permits buccal swabs, in addition to blood sample, as means of providing sample, and expands who is authorized to take such sample. (Sections 2, 3, 4)
  - Changes intent of crime from “refuses to provide DNA sample” to “*after receiving written notice* fails to provide DNA sample within 1 year.” *This provision takes effect July 1, 2013.* (Sections 5, 50)
- **Habitual Offenders:**
  - If offender has 2 prior prison sentences for not less than 3 years each, upon 3<sup>rd</sup> conviction of a felony, the offender shall receive the maximum term under the statute for the crime. (Section 47)
  - Changes parole eligibility of habitual offenders from ½ the maximum sentence to 2/3rds maximum term. (Section 40)

- If offender has 2 prior convictions for enumerated crimes, arising out of separate incidents, and offender has been sentenced to at least 3 years of incarceration on each, upon a 3<sup>rd</sup> and subsequent violation of an enumerated crime, the offender shall receive the maximum term for the offense, and shall not be eligible for probation, parole, work release, furlough or receive any sentence deduction for program participation. (Sections 40, 41, 47)
  - Provides SJC review of habitual offender sentences without parole eligibility. (Sections 43, 44)
  - Youthful offender adjudications and juvenile delinquencies cannot be considered. (Section 47)
- **Parole Board:**
    - Authorizes Governor to remove parole board members for cause. Parole Board member has right to public hearing before the Governor's Council relative to removal. (Section 6)
    - Increases number of members on Parole Board nominating panel from 5 to 9; additional 4 members are 1 person chosen from list of 3 nominees by MDAA, 1 person chosen from list of 3 nominees by CPCS, 1 person chosen from list of 3 nominees by Prisoner's Legal Services, and member from law enforcement. (Sections 7, 8)
    - Requires that the list of 5 to 9 nominees submitted to the Governor to fill vacancy on Parole Board include a person with 5 years of experience in adolescent development and psychology, and a victim witness advocate. (Sections 9, 10)
    - Requires new board members to complete comprehensive training within 90 days of appointment; all board members must complete 8 hours of training annually. (Section 49)
- **Granting of Parole Permits:**
    - Requires the parole board members to consider a "risk and needs assessment:" can the inmate remain at liberty without violating the law if released with appropriate conditions and community supervision. (Section 36)
    - Requires summary of Board's decision, including written certification that board members have reviewed entire criminal record of inmate seeking parole, and number of members voting in favor/against granting permit. (Section 36)
    - Parole Board must consider inmate participation in programs, good behavior and potential for successful participation in available risk reduction programs. (Section 36)
    - Offenders serving more than one life sentence arising out of separate incidents are ineligible for parole. (Section 37)
    - Permits Parole Board to postpone a parole hearing for 30 days if interests of justice so require; written findings required. (Sections 37, 42)
    - Requires parole for persons serving a life sentence to be approved by 2/3rds of the board. (Section 39) (Current law requires a majority vote).
    - Requires Parole Board to certify in writing that the AG, DA, police and victim have been notified at least 30 days prior to a parole hearing for an offender serving a life sentence or for an offender convicted of a crime enumerated in subsection (b) of habitual offender law and is serving a sentence of 5+ years. (Section 38)